

## MEMORANDUM

DATE: May 30, 2007

TO: Ms. Sharon L. Summers, DMMA  
Policy and Program Development Unit

FROM: Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: 10 DE Reg. 1660 [Medicaid Fraud Education Regulations]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposal to adopt regulations implementing Section 6032 of the Deficit Reduction Act of 2005 (DRA) published as 10 DE Reg. 1660 in the May 1, 2007 issue of the Register of Regulations. Section 6032 contemplates active enforcement of Medicaid fraud. It requires entities receiving or making annual payments under a Medicaid State Plan of at least \$5 million annually to establish and disseminate written policies about Federal and State false claims. Covered agencies would include MCOs and large providers such as hospitals. DMMA will require each covered entity to submit policies and dissemination plans within 3 months of approval of the State plan amendments.

DMMA has essentially followed the CMS template (attached) for its proposed State Plan amendment. However, the "background" section of the regulations recites that covered entities must also include in policies State law provisions, both civil and criminal, dealing with whistleblowers, fraud, waste, and abuse. At 1661. This requirement is only obliquely addressed in the text of the regulation. At 1664. Relevant state law provisions could include the following: 1) insurance and health care fraud (Title 11 Del.C. §§913 and 913A); official misconduct (Title 11 Del.C. §1211); insurance fraud (Title 18 Del.C. Ch. 24); and public assistance fraud (Title 31 Del.C. Ch. 10). SCPD recommends that DMMA consider including some specific references to such State law provisions in its regulations.

SCPD endorses the regulations subject to elaboration on the requirement of inclusion of State law fraud references. Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or recommendations on the proposed regulation.

cc: Mr. Harry Hill  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council